



COLORADO

Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

December 9, 2015

Ms. Julie Maurer, Registered Agent
The Heifer Authority, LLC
5025 East County Road 82
Carr, Colorado 80612

Certified Mail Number: 7014 2870 0000 7699 5955

RE: Service of Notice of Violation/Cease and Desist/Clean-up Order, No.: CO-151208-1

Dear Ms. Maurer:

The Heifer Authority, LLC ("Heifer Authority") is hereby served with the enclosed Notice of Violation / Cease and Desist / Clean-up Order (the "NOV/CDO/CUO"). This NOV/CDO/CUO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602, 25-8-605 and 25-8-606, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO/CUO upon findings that Heifer Authority has violated the Act and control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO/CUO.

Pursuant to §25-8-603, C.R.S., Heifer Authority is required, within thirty (30) calendar days of receipt of this NOV/CDO/CUO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO/CUO or the issuance of additional enforcement actions.

Should you or representatives of Heifer Authority desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/CUO, please do not hesitate to contact me at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us

Sincerely,

Kelly Morgan, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION



Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Jerry Blehm, Larimer County Department of Health and Environment
Michael Beck, Community Development and Partnership Section, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Erin Scott, Permits Section, CDPHE
Tania Watson, Business Services Unit, CDPHE
Chad DeVolin, Environmental Agriculture Program, CDPHE
Michael Sherry, Environmental Agriculture Program, CDPHE
Seth Summerville, The Heifer Authority, LLC





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER / CLEAN-UP ORDER
NUMBER: CO-151208-1

IN THE MATTER OF: THE HEIFER AUTHORITY, LLC
 UNPERMITTED
 LARIMER COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, 25-8-605, and 25-8-606, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Clean-up Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, The Heifer Authority, LLC ("The Heifer Authority") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. The Heifer Authority is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing control regulation, 5 CCR 1002-81, §81.3(25).
3. The Heifer Authority owns and/or operates The Heifer Authority facility, located at 40.84105° North and 104.9810° West, near the unincorporated community of Carr, Weld County, Colorado (the "Facility"). The Facility is a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(6).
4. Department records establish that the Facility has the capacity to stable or confine 7,000 head of cattle and therefore is a large CAFO as defined by 5 CCR 1002-81, §81.3(16). The Facility is currently registered with the Department as a CAFO under registration number CONPC0062.
5. The Facility's production area is comprised of open lot animal confinement areas, concrete feed-bunk areas, a commodities storage area, and a single wastewater impoundment located just west of the animal confinement areas. Manure is accepted by third parties and transferred off-site for land application. The Facility was designed to capture and collect open-lot wastewater generated in the northern animal confinement and commodities storage areas and convey that wastewater to the wastewater impoundment.



6. An unnamed drainage (the "Unnamed Drainage") exists along the western side of the Facility and continues south and west from the Facility boundary through private land, eventually combining with Coal Creek.
7. Pursuant to the Department's authority under §25-8-306 C.R.S., the Department's Environmental Agriculture Program ("Department EAP") staff conducted inspections of the Facility on May 21, 2015 and May 27, 2015 to determine The Heifer Authority's compliance with the Water Quality Control Act and its implementing regulations.

Failure to Properly Operate and Maintain Resulting in Unauthorized Discharge to Surface Water

8. Pursuant to 5 CCR 1002-81, §81.5(1)(b), there shall be no discharge of manure or wastewater from the production area to surface water, except whenever precipitation causes a discharge and the production area is designed, constructed, operated, and maintained to contain all manure and wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm or Chronic Storm, whichever is greater.
9. Pursuant to 5 CCR 1002-81, §81.6(1), The Heifer Authority is required to develop, document in a Facility Management Plan ("FMP"), and implement the following surface water protection elements:
 - a. Use of the following structures, methods, and procedures to control wastewater
 - i. Impoundments -

All impoundments must be designed, constructed, and maintained to be capable of storing, the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or Chronic Storm, whichever is greater, plus two feet of freeboard.
 - ii. Conveyance Structures -

All conveyance structures must be designed, constructed, and maintained to be capable of carrying the flow expected from a 25-year, 24-hour storm or Chronic Storm, whichever is greater.
10. On May 15, 2015, the Department's EAP received a complaint regarding an alleged discharge of manure and wastewater from the Facility. On May 21, 2015, Department EAP staff inspected the Facility and observed manure and wastewater flowing uncontained from the southern/southeastern production area and running along a farm road, eventually flowing into the Unnamed Drainage. The manure and wastewater continued to flow south in the Unnamed Drainage, across Aldridge Road and pooled behind an earthen dam located just before the confluence of the Unnamed Drainage and Coal Creek. Department EAP staff noted that The Heifer Authority had not constructed a conveyance structure to capture manure and wastewater from the southeastern production area as required by 5 CCR 1002-81, §81.6(1)(a)(ii)(A).
11. On May 27, 2015, Department EAP staff conducted another inspection of the Facility. During the inspection, Department EAP staff observed a pipe in the embankment of the wastewater impoundment. The pipe was located approximately four to five feet below the top of the impoundment berm. Because of this configuration, wastewater from the impoundment could flow freely through the pipe and into the Unnamed Drainage. Wastewater was visible at the outfall of the pipe and in the Unnamed Drainage. Department EAP staff also observed pooled and flowing wastewater in the Unnamed Drainage from the area of Aldridge Road to the earthen dam located just before the confluence of the Unnamed Drainage and Coal Creek. Information provided by The Heifer Authority establishes that the pipe was originally installed in the wastewater impoundment to provide a mechanism to transfer wastewater from the impoundment to proposed land

application areas via a gate valve; however, the gate valve was not closed after pipe installation, allowing wastewater to flow freely through the pipe regardless of the type or nature of a precipitation event. Because manure and wastewater could flow freely through the pipe in the impoundment, The Heifer Authority was not operating and maintaining the impoundment in a manner such that it was capable of containing and storing the volume of all manure and wastewater area as required by 5 CCR 1002-81, §81.5(1)(b), and 5 CCR 1002-81, §81.6(1)(a)(i)(A).

12. The Unnamed Drainage is “surface water” as defined by 5 CCR 1002-81, §81.3(35).
13. The Unnamed Drainage is “waters of the state” as defined by 5 CCR 1002-81, §81.3(39).
14. The Heifer Authority’s failure to design, construct, and maintain a conveyance structure to capture manure and wastewater from the southern/southeastern production area to protect surface water, as identified above in paragraph 10, constitutes violations of 5 CCR 1002-81, §81.5(1)(b) and 5 CCR 1002-81, §81.6(1)(a)(ii)(A).
15. The Heifer Authority’s failure to operate and maintain the impoundment to ensure that manure and wastewater could be contained to protect surface water, as identified above in paragraph 11, constitutes violations of 5 CCR 1002-81, §81.5(1)(b) and 5 CCR 1002-81, §81.6(1)(a)(i)(A).
16. The Heifer Authority’s discharge of manure and wastewater to surface water from the production area, as identified above in paragraphs 10 and 11, constitutes violations of 5 CCR 1002-81, §81.5(1)(b).

Failure to Notify the Division of Discharge

17. Pursuant to §25-8-602(2) C.R.S., any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the Division of such discharge.
18. As noted in paragraphs 10 and 11 above, The Heifer Authority failed to properly implement the required surface water protection elements, which resulted in discharges of manure and process wastewater to the unnamed drainage. Based on Facility conditions observed by Department EAP staff during the May 21, 2015 and May 27, 2015 inspections, these discharges were likely ongoing for a significant period of time but were at least noticeable enough to prompt the complaint received by the Department’s EAP on May 15, 2015. However, The Heifer Authority failed to notify the Division of the discharges.
19. The Heifer Authority’s failure to notify the Division of the discharge(s) to waters of the state constitutes violation(s) of §25-8-602(2) C.R.S.

Failure to Properly Design Impoundment

20. Pursuant to 5 CCR 1002-81, §81.6(1), The Heifer Authority is required to develop, document in a FMP, and implement methods to control wastewater to protect surface water, including the use of impoundments. Further, 5 CCR 1002-81, §81.6(1)(a)(i)(A) requires that all impoundments be designed, constructed, and maintained to be capable of storing the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or Chronic Storm, whichever is greater, plus two feet of freeboard.

21. The design storm for the Facility is based on the volume of runoff generated by the 10-year, 10-day Chronic Storm which is greater than that of the 25-year, 24-hour storm. Therefore, the Facility's impoundment must be designed, constructed, and maintained to be capable of storing the volume of all manure and wastewater, including runoff resulting from the Chronic Storm, plus two feet of freeboard.
22. On August 31, 2015, The Heifer Authority provided documentation to the Department EAP establishing that, based on current conditions and the expanded southern/southeastern production area, the Facility's impoundment is not capable of storing the volume of all manure and wastewater including the runoff resulting from a Chronic Storm, plus two feet of freeboard.
23. The Heifer Authority's failure to design and construct an impoundment capable of storing the volume of all manure and wastewater, including the runoff resulting from a Chronic Storm, plus two feet of freeboard constitutes violations of 5 CCR 1002-81, §81.6(1)(a)(i)(A).

NOTICE OF VIOLATION

29. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that The Heifer Authority has violated the following sections of the Colorado Water Quality Control Act and its implementing control regulations.

5 CCR 1002-81, §81.5(1)(b), which states "There shall be no discharge of manure or wastewater from the production area to surface water, except whenever precipitation causes a discharge and the production area is designed, constructed, operated, and maintained to contain all manure and wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm or Chronic Storm, whichever is greater."

5 CCR 1002-81, §81.6(1)(a)(i)(A), which states in part "All impoundments must be designed, constructed, and maintained to be capable of storing, the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or Chronic Storm, whichever is greater, plus two feet of freeboard..."

5 CCR 1002-81, §81.6(1)(a)(ii)(A), which states "All conveyance structures must be designed, constructed, and maintained to be capable of carrying the flow expected from a 25-year, 24-hour storm or Chronic Storm, whichever is greater."

§25-8-602(2) C.R.S., which states in part "any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the Division of such discharge."

REQUIRED CORRECTIVE ACTIONS

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602, §25-8-605, and §25-8-605 C.R.S., The Heifer Authority is hereby ordered to:

30. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S. and its implementing regulations promulgated thereto.

Furthermore, the Division hereby orders The Heifer Authority to comply with the following specific terms and conditions of this Order:

31. Within thirty (30) calendar days of receipt of this Order, The Heifer Authority shall submit to the Division an updated Facility Management Plan ("FMP"), along with a written certification that The Heifer Authority has reviewed the FMP with its staff responsible for ensuring compliance with the FMP. The FMP shall address the requirements outlined in 5 CCR 1002-81, §81.6(1), 5 CCR 1002-81, §81.6(2), 5 CCR 1002-81, §81.6(3), and 5 CCR 1002-81, §81.6(4), specifically including:
 - a. Design, construction, and maintenance documentation for all conveyance structures;
 - b. Land application practices and procedures, as necessary;
 - c. Impoundment liner records and certifications;
 - d. Weekly inspection protocols and procedures, including procedures to correct any deficiencies identified during weekly inspections;
 - e. Recordkeeping requirements; and
 - f. Requirements to update the FMP as necessary.If the Division has comments on the FMP, The Heifer Authority shall address those comments within seven (7) calendar days of receipt of comments.
32. Within sixty (60) calendar days of receipt of this Order, The Heifer Authority shall submit to the Division a time schedule for the design, construction initiation, construction completion, and certification of a wastewater impoundment at the Facility that meets the impoundment criteria required by 5 CCR 1002-81. The implementation time schedule submitted must identify completion of all measures by no later than March 31, 2016. Along with this schedule, The Heifer Authority shall submit an interim waste management strategy that outlines how the wastewater in the current impoundment will be managed to prevent the unauthorized discharge of manure or wastewater to surface water. The measures and time schedule submitted shall become a condition of this Order, and The Heifer Authority shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
33. Within thirty (30) calendar days of receipt of this Order, The Heifer Authority shall retain the services of a qualified individual or entity, such as an individual experienced in habitat restoration, to perform an investigation to determine the nature and extent of the surface water and soil contamination impacts resulting from: 1) the discharge(s) from the Facility into the Unnamed Drainage, and 2) the wastewater that flowed into the grassy area located at the southern/southeastern production area. The investigation shall include, at a minimum:
 - a. A determination of the geologic and hydrologic characteristics of the Unnamed Drainage and grassy area, including but not limited to: characteristics of the Unnamed Drainage; the history, purpose, and functionality of the earthen dam that exists in the Unnamed Drainage; the connectivity between the Unnamed Drainage and Coal Creek; soil types; and nitrogen and phosphorus concentrations of the soil within the Facility property; and
 - b. A determination of the toxicity, mobility, and persistence in the environment of the pollutants contained in the manure and wastewater discharged from the Facility (including to the land).
34. Within ninety (90) calendar days of receipt this Order, The Heifer Authority shall submit a report outlining the findings from the evaluation identified in paragraph 33. The report shall also identify a plan for remediating impacted areas, if applicable and necessary, and a time schedule for initiating and completing all remedial activities of the impacted areas. The submitted plan and

time schedule shall become a condition of this Order and The Heifer Authority shall comply with the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall become a condition of this Order. Within fifteen (15) calendar days of completing the remediation activities (if applicable), The Heifer Authority shall submit a final report to the Division outlining The Heifer Authority's remedial actions and evidence that the actions resulted in fulfillment of the plan or alternate plan, as applicable.

35. The Heifer Authority shall submit monthly progress reports to the Division outlining efforts taken to achieve compliance with this Order. The first report shall be submitted to the Division on or before January 31, 2016 and subsequent reports shall be due at the end of every month thereafter. At a minimum, each report shall outline activities completed in the previous month and planned activities for the next month to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.
36. If The Heifer Authority becomes aware of any situation or circumstances that cause The Heifer Authority to become unable to comply with any condition or time schedules set forth by this Order, The Heifer Authority shall provide written notice to the Division within five (5) calendar days of The Heifer Authority becoming aware of such circumstances. The Heifer Authority's notice shall describe what, if any, impacts will occur on The Heifer Authority's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
37. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, The Heifer Authority shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order/ Clean-up Order, The Heifer Authority shall submit an original and an electronic copy to the Division at the following address:

Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3634
Email: kelly.morgan@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order/ Clean-up Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order/ Clean-up Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S. and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order/ Clean-up Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 8th day of December 2015.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT


Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION